

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 10/23/02 Item 3.c.

File Number
CP02-001

Application Type
Conditional Use Permit Renewal

Council District
3

Planning Area
Central

Assessor's Parcel Number(s)
434-07-056

STAFF REPORT

PROJECT DESCRIPTION

Completed by: John Davidson

Location: Southwest corner of S. First Street and Willow Street

Gross Acreage: 0.52

Net Acreage: 0.52

Net Density: n/a

Existing Zoning: CG Commercial

Existing Use: Nightclub with hours of operation after midnight

Proposed Zoning: No change

Proposed Use: No change

GENERAL PLAN

Completed by: JED

Land Use/Transportation Diagram Designation
General Commercial

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JED

North: Retail Commercial

LI Light Industrial

East: Retail Commercial

LI Light Industrial

South: Commercial

CN Commercial

West: Residential

CN Commercial

ENVIRONMENTAL STATUS

Completed by: JED

☐ Environmental Impact Report found complete
☐ Negative Declaration
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: JED

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

APPLICANT/OWNER

Sandra Avenessian
270 Acacia Lane
Alamo, CA 94507

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: JED

Department of Public Works

None Received

Other Departments and Agencies

See attached memorandum from the Police Department

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, Club Caribe, is requesting a Conditional Use Permit to allow the continued operation of a nightclub to 2 a.m., with no proposed expansion of use. Club Caribe is a 5,200 square foot nightclub located on a 0.52 gross acre site at the southwest corner of S. First and Willow Streets. Surrounding uses include commercial uses to the north, east, and south, and residential uses to the west.

A Conditional Use Permit is required for the operation of a nightclub and for any commercial use that operates between the hours of 12:00 midnight and 6:00 a.m. The nightclub originally opened for business in 1986. The Planning Commission approved the renewal of the current permit for five years (CP96-100) on April 23, 1997, which requires the timely application for renewal more than 90 days and no greater than 180 days prior to the date of expiration (April 23, 2002). The applicant has met that requirement, by filing a Conditional Use Permit Renewal Application on January 2, 2002 and is requesting renewal of the permit, which would be the fourth Conditional Use Permit approval issued for the nightclub since it opened in 1986.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from further review under the provisions of the California Environmental Quality Act, as approval of the requested permit would result in no change to the environment.

GENERAL PLAN CONFORMANCE

The proposed renewal of a nightclub use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial in that a nightclub is a commercial use.

ANALYSIS

As a part of the previous approval, the existing use has been evaluated for Conformance with the City Council Policy Guidelines for Evaluation of 24-hour Uses and with the Guidelines for the Evaluation of Nightclubs and Bars. The use was found to be in conformance with both Council Policies, which provide guidelines for separation between these types of uses and other incompatible use types, especially residential. The guidelines also provide direction for the operation of these types of uses, in order to minimize impacts relating to noise, trash, parking, and the like.

The proposed Conditional Use Permit has been evaluated for its consistency with the Policy which is intended to provide guidelines for the appropriate development of establishments that operate on a 24-hour basis in the City. The nightclub use is generally consistent with the policy. Generally, the policy recommends a 300-foot separation between late night uses and residential properties; however, this requirement may be reduced or increased upon review of the specific circumstances of the project. Residential uses are located along the site's western property line. One way to reduce impacts to neighboring residences would be to construct a masonry wall along the property line—however, this would result in the removal of the mature landscaping located along the western property line. The Planning Commission has previously not required removal of the landscaping along the western property line.

The Police Department Vice Section and the Code Enforcement Division of the Department of Planning, Building and Code Enforcement Department have reported no code violations or noncompliance with the club's current Conditional Use Permit.

The Police Department has indicated that they have no objections to the renewal of this Conditional Use Permit. The Police Department reports that crime statistics for the area as a whole are not over the 20% crime index. In addition, the census tract that the project is located in is not considered over-concentrated with regard to the number of liquor licenses in the area.

The Police Department memo does indicate that the nightclub has routinely had a substantial number of calls for service each year. Most of these calls for service, however, are related to disturbances and to 911 calls. These calls for service are an expected part of a nightclub use. The Police Department has not requested any additional conditions beyond those that are already included in the Conditional Use Permit and the Police Department's Entertainment Permit.

The Planning Department has also referred the project to the Washington Neighborhood Association for comment, who have not relayed any concerns about the project.

Staff is recommending that the Conditional Use Permit be issued with a five-year time condition, in order to monitor operation of the club, and to allow for additional updates from the Police Department to the Planning Commission.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial and Combined Industrial/Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CG General Commercial Zoning District.
3. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San Jose Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
4. The continuation of a nightclub operation is proposed with hours of operation until 2 a.m.
5. No development or expansion of use is proposed.
6. The nightclub has previously obtained Conditional Use Permits for the use in 1986, 1992, and 1997.
7. No code enforcement problems of a nuisance nature have been reported.
8. The facility shares a property line with the nearest residential use.
9. The proposed project includes 80 seats.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San Jose 2020 General Plan Land Use/Transportation Designation of General Commercial.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. As an existing nightclub, the proposed project is consistent with the land use compatibility provisions of the City Council Policy Guidelines for the Evaluation of Nightclubs and Bars.
5. The proposed project is compatible with the commercial uses that border the site on three sides. An existing eight foot landscaping strip with mature trees and a wood fence provides an adequate buffer between the proposed use and the residential use immediately to the west.
6. The proposed project includes 44 parking spaces, which is in excess of the Zoning Code Requirement of 33 spaces for a nightclub with 80 seats.

7. The existing nightclub is consistent with the Typical Use Restrictions provision of the City Council Policy Guidelines for the Evaluation of Nightclubs and Bars, regarding maximum occupancy, time of operation, and amplified sound within the building.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "La Cumbre/El Caribe", dated October 10, 1996, on file with the Department of Planning, Building and Code Enforcement to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Landscaping.** Planting and irrigation are to be maintained, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material shall be removed and replaced by the property owner.
5. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
6. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning, Building and Code Enforcement.
7. **Hours.** This nightclub shall be permitted to operate between the hours of 6 a.m. and 2 a.m., Monday through Sunday.

8. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
9. **Amplified Sound.** All amplified sound shall be contained within the buildings and the buildings shall maintain adequate insulation to prevent sound from emanating outside.
10. **Police Permit.** This permit is subject to obtaining a Police Department Entertainment Permit for the facility. All conditions of that permit must be complied with, in addition to the conditions contained in this Conditional Use Permit.
11. **Occupancy.** The maximum occupancy of the subject building shall not exceed the occupancy limit as determined by the City of San Jose Fire Department.
12. **ABC Licensing.** The applicant shall comply with the requirements of the State Alcoholic Beverage Control Board.
13. **Age Limit.** The minimum age for patrons of this facility shall be 21 years or older.
14. **Noise and Acoustics.**
 - a. During the hours of nightclub operation, windows and doors must remain closed to minimize the impacts of amplified sound on adjacent land uses. Adequate ventilation must be provided to allow windows and doors to remain closed.
 - b. Noise generated by the facility shall not exceed the standard of 60 dBA measured at the property line.
 - c. An acoustical engineer shall take measurements of the noise produced by the entertainment use at the property lines on a monthly basis, and submit quarterly reports to the Director of Planning. In the event entertainment noise exceeds 60 dBA at the property line, the report shall include recommended measures to bring the entertainment use into compliance with this Permit.
15. **Games.** No pool or billiard tables, coin-operated or other games regulated by the City shall be permitted in excess of the number allowed by Title 20 of the Municipal Code.
16. **Trash, Refuse, Garbage and Litter.**
 - a. Cleaning shall including keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of sidewalks along the project's frontage on South First Street.
 - b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, seven days a week.
 - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.

- d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the project frontage.

CONDITIONS SUBSEQUENT

1. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from the date of this Permit.
 2. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, and application for renewal must be filed more than 90 calendar days but less than 180 days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or the denial of the application for renewal has become final.
 3. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
- c: Ari Avenessian, P.O. Box 971, Alamo, CA 94507
William Gates, Attorney, 10 Almaden Blvd., Suite 400, San Jose, CA 95113
Engineering Services